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REMARKS

Claims 3, 6-9, 12, and 14-27 are pending in this application. By this Reply, claims 3, 6, 8, 9, 12, and 14-16 have been amended, new claims 17-27 have been added, and claims 1, 2, 4, 5, 10, 11, and 13 have been canceled without prejudice or disclaimer. No new matter has been added. Prompt examination and allowance of this application are respectfully requested.

Election/Restriction

Applicant maintains the position that the Election/Restriction dated April 22, 2002 was improper because the alleged species are not mutually exclusive. Nonetheless, in order to expedite prosecution of this application, Applicant has canceled withdrawn claims 2, 4, 5, 11, and 13 without prejudice or disclaimer toward the filing of a continuing application directed thereto.

Claim Rejections

In the Office Action, claims 1, 9, and 10 were rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,031,973 to Gillet ("Gillet") and over U.S. Patent No. 3,310,127 to Siber et al. ("Siber"); claims 1, 9, and 15 were rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,840,437 to Henry et al. ("Henry"); and claims 1, 3, 8-10, 12, 15, and 16 were rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,984,436 to Hall ("Hall"). Applicant respectfully traverses these rejections.

As mentioned above, independent claims 1 and 10 have been canceled, thereby rendering moot the aforesaid rejections based on Gillet, Siber, and Henry. In addition, claim 9 has been amended to depend from independent claim 3, which was not rejected over Gillet, Siber, or Henry. Further, regarding the rejection based on Henry, it is not

clear how claim 15 could have been rejected since independent claim 10, from which claim 15 depended, was not rejected over Henry. Accordingly, Applicant requests that the § 102(b) rejections based on Gillet, Siber, and Henry be withdrawn.

Applicant addresses the rejection based on Hall with respect to independent claims 3 and 12, which have been amended into independent form (i.e., to include the features of canceled claims 1 and 10, respectively).

Regarding claim 3, Hall does not disclose or suggest, *inter alia*, (1) "determining a force to be applied to the idler based on the determined direction of operation of the drive wheel," and (2) determining the force, "depending on the determined direction of operation, [based on the determined direction and] the sensed pressure of fluid being used to operate the drive wheel." Instead, Hall discloses a tensioning circuit 11 including a cylinder 31 connected to an idler wheel 13. Hall further discloses maintaining a tension in a track 12 "proportional to the level of the highest pressure in the motor ports [17, 18]." Hall, col. 3, lines 21-29. Indeed, the track tension pressure is not based on the direction of operation of the drive wheel 14, and furthermore, the determination of the track tension pressure based on the pressure in motor ports 17, 18 does not depend on a direction of operation of the drive wheel. Therefore, Hall does not disclose or suggest, "determining a force to be applied to the idler based on the determined direction of operation of the drive wheel and, depending on the determined direction of operation, the sensed pressure of fluid being used to operate the drive wheel," as recited in claim 3.

For reasons similar to those discussed above in connection with claim 3, Hall also fails to disclose or suggest the features of independent claim 12. For example, Hall

does not disclose or suggest a work machine including, *inter alia*, a controller configured to operate the valve assembly to apply a force to the idler based on a direction of operation of the drive wheel and, depending on the determined direction of operation, the sensed pressure of fluid being directed to the drive wheel,” as recited in claim 12.

Additionally, independent claim 16 is patentably distinguishable over Hall for reasons similar to those discussed above in connection with claim 3. For example, Hall does not disclose or suggest, *inter alia*, (1) “determining a force to be applied to the idler based on a direction of operation of the drive wheel and a sensed position of the idler when the drive wheel is operated in a first direction,” and (2) determining the force to be applied to the idler “based on a direction of operation of the drive wheel, a sensed pressure of fluid being used to operate the drive wheel, and a sensed position of the idler” when the drive wheel is operated in a second direction.

Therefore, for at least the reasons set forth above, independent claims 3, 12, and 16 patentably distinguish over Hall. Accordingly, Applicant submits that the § 102(b) rejection based on Hall should be withdrawn.

New Claims 17-27

Claims 17 and 18 depend from independent claims 3 and 12, respectively, and are supported by the specification at, for example, paragraph 41. Furthermore, claims 17 and 18 are consistent with the elected species; that is, the alleged species drawn to a method of operating a track-type machine and a work machine “in which the sensed pressure of the fluid used to operate the drive wheel is used to determine the force applied to the idler wheel”. As described in the specification, the force to be applied to the idler may be a function of the pressure of fluid being used to operate the drive

wheel, and the pressure of fluid being used to operate the drive wheel is proportional to a drawbar load of the work machine. See, e.g., Specification, paragraph 41. Thus, it follows that the force applied to the idler may be a function of a drawbar load of the machine, as recited in claims 17 and 18.

Claims 19-27 are supported by the specification at, for example, paragraphs 18-64. Additionally, these claims are consistent with the elected species described operationally with respect to FIG. 5. As described in the specification with respect to the elected species, the force to be applied to the idler may be based on the direction of operation of the drive mechanism and the position of the idler and, when the drive mechanism is operated in a certain direction, the force may be additionally based on the pressure of fluid being used to operate the drive mechanism. Thus, the election of the alleged species identified above (i.e., "one in which the sensed pressure of the fluid used to operate the drive wheel is used to determine the force applied to the idler wheel") also includes the determination of a force based on the direction of operation of the drive mechanism and the position of the idler when the drive mechanism is not operated in a certain direction.¹ Accordingly, Applicant submits that new claims 19-27 are readable on the elected species and, therefore, meet the requirements of M.P.E.P. § 809.02(a).

In addition, Applicant submits that the cited documents do not disclose or suggest the features of new independent claims 19 and 24. For example, the cited documents do not disclose or suggest, *inter alia*, "determining an amount of recoil of the

¹ Applicant is not aware of any requirement that the claims include every feature of an elected species, but only that the elected claims be "readable" on the elected species. See, e.g., M.P.E.P. § 809.02(a).

idler," and "determining, when the drive wheel is operated in a first direction, a force to be applied to the idler based on the determined direction of operation of the drive wheel and the amount of recoil of the idler," as recited in claim 19. Nor do the cited documents disclose or suggest, *inter alia*, "a controller configured to determine a direction of operation of the drive wheel and an amount of recoil of the idler, and to operate the valve assembly, when the drive wheel is operated in a first direction, to apply a force to the idler based on the determined direction of operation of the drive wheel and the amount of recoil of the idler," as recited in claim 24. Therefore, Applicant submits that independent claims 19 and 24 patentably distinguish over the cited documents.

Conclusion

Claims 6-9, 14, 15, 17, 18, 20-23, and 25-27 depend from one of independent claims 3, 12, 19, and 24, and are at least allowable for the reasons that respective claim 3, 12, 19, or 24 is allowable. In addition, the dependent claims recite unique combinations that are neither taught nor suggested by the cited art, and therefore each is separately patentable.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

The Examiner is invited to telephone the undersigned at (202) 408-4252 if the Examiner deems that a telephone conversation would further the prosecution of the application.

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Please grant any extensions of time required to enter this response and charge
any additional required fees to our deposit account no. 06-0916.

Respectfully submitted,

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Dated: December 12, 2003

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